

REMARKS

Claims 58-71 are pending. Applicants thank the Examiner for the indication that claims 68-71 are patentable if rewritten in independent form.

The Examiner rejected claims 58-71 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner states that Applicants omitted an essential step in the claim. Applicants amended claim 58 to add the step of "passing at least the first end of the at least one tissue securing element through the first hollow tissue structure". Support for the amendment is found at least at paragraph 0082 of the specification (Publication No. 20040172050). No new matter has been added. Applicant submits that the rejection has been overcome and requests the Examiner to withdraw the rejection.

The Examiner rejected claims 58-67 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,037,433 (Wilk). Applicants respectfully traverse the rejection. Claim 58 claims a method for anastomosing a first hollow tissue structure to a second hollow tissue structure. Wilk neither teaches nor describes a method of anastomosing a first hollow tissue structure to a second hollow tissue structure; instead, Wilk describes a method of repairing tissue injuries, closing openings in internal body tissues, and for ligating tubular body organs. See Wilk, col 1:16-20.

More particularly, as to the individual claimed steps, Wilk fails to teach or describe at least three of the steps related to the method of anastomosing two hollow tissue structures, and the Examiner indicates as much in the Office Action at page 3, where the Examiner states that it "would have been obvious to one having ordinary skill in the art to perform the well-known end-to-end anastomosis of a vascular prosthesis and an aorta". In more particular detail, Wilk fails to describe at least steps a), d) and e) of claim 58, which claims: a) providing an anastomosis device comprising at least one tissue securing element having a first end and a second end, the tissue securing element comprised of a material capable of being biased from an unbiased configuration to a biased configuration; b) passing at least the first end of the at least one tissue securing element through the first hollow tissue structure; c) holding the at least one tissue securing element in the biased configuration; d) inserting at least the first end of the at least one tissue securing element through an opening in a second

hollow tissue structure while the tissue securing element is in the biased configuration; and e) permitting the tissue securing element to move from the biased configuration to the unbiased configuration such that the first end and the second end of the tissue securing element compress a portion of the end of a first hollow tissue structure and a portion of the second hollow tissue structure adjacent to the opening.

Applicants submit that the Examiner has not met his burden of proving obviousness, as simply stating that it would have been obvious does not make it so. The Examiner rejected both claims 58 and 61 on the basis that the claimed steps are obvious to one skilled in the art. In contrast, the MPEP at § 2144.03 states that it "would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." Applicants thus can not answer the rejection as the rejection has not been properly supported, other than to state that the Examiner's assertions are not correct; one having ordinary skill in the art would not find it obvious to use the tissue securing element 44 of Wilk to perform at least the three steps described above (steps a), d) and e)). Further, it would not have been obvious to evert the vessels as is described in claim 61. As a result, Applicants request that the Examiner allow claims 58-67 as patentable over Wilk.

The Commissioner is hereby granted permission to charge any necessary fee during the prosecution of this application to charge Account No. 10-0750/HRT303C2/BST.

If the Examiner believes that a telephone conference with Applicants' attorneys would be helpful in clarifying any issue, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

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